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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re THOMAS S., a Person Coming Under
the Juvenile Court Law.

H026736
(Santa Clara County
Super. Ct. No. J120574)

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS S.,

Defendant and Appellant.

Thomas S., a minor, appeals an order of the juvenile court committing him to the California Youth Authority (CYA). (Welf. & Inst. Code, § 602.) He challenges his commitment to CYA. We affirm.

STATEMENT OF THE FACTS AND CASE

In June 2003, Thomas, along with three other boys, left his court-ordered placement at Trinity Anza. He lived on the streets with his friends, and was arrested for petty theft of a Rite Aid store in Los Altos.

The Santa Clara County District Attorney's Office filed a Welfare and Institutions Code section 777¹ petition, alleging a probation violation based on the minor's leaving his court-ordered placement. A subsequent section 602 petition was filed charging Thomas with petty theft of the Rite Aid store. The section 602 petition was dismissed, and the section 777 petition was amended to add Thomas's use of and possession of alcohol as another probation violation.

Thomas admitted the probation violation. After a contested dispositional hearing, Thomas was committed to CYA for a maximum period of seven years, eight months. This appeal followed.

DISCUSSION

Thomas asserts on appeal that the juvenile court abused its discretion when it committed him to CYA, because the conditions at CYA would not support a finding that he would probably benefit from that placement, and that the court failed to consider other conditions in committing him to CYA.

On appeal, this court must review a CYA commitment "only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court. [Citations.]" (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) In evaluating the evidence, we apply the substantial evidence test. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 579.) "The evidence, however, must demonstrate probable benefit to the minor from commitment to the CYA and that less restrictive alternatives would be ineffective or inappropriate. [Citation.]" (*In re George M.* (1993) 14 Cal.App.4th 376, 379.)

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise noted.

In determining the appropriate disposition for a minor found to be a ward of the court, the court must focus on both the need for public protection and the best interests of the minor. (§ 202; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) It should consider, among other things, the age of the minor, the circumstances and gravity of the offense, and the minor's previous delinquent history. (§ 725.5.) If the court decides that a commitment to CYA is appropriate, it must be "fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority." (§ 734.) Moreover, "[i]f two programs are found appropriate and one is found unavailable for whatever reasons, the court should not be hindered in view of the situation before it from choosing the perhaps less desirable program. [Citation.]" (*In re Gerardo B.* (1989) 207 Cal.App.3d 1252, 1258-1259.)

Here, the juvenile court committed Thomas to CYA because it was "satisfied that the Youth Authority can provide services that will assist the minor" The basis for the court's view was that CYA could provide continued education and substance abuse and anger management courses. However, Thomas argues on appeal that at the time he was committed to CYA, "it was a matter of public record that the CYA could not provide these services, and thus there could be no probable benefit to Thomas from the commitment." As a result, Thomas asserts the court abused its discretion, and the matter should be remanded for a new dispositional hearing.

In support of the appeal, Thomas relies on allegations contained in a complaint against the former CYA director, Jerry Harper, dated January 16, 2003, and reports intended to substantiate the allegations in the complaint.² The gist of these documents is that CYA failed to provide adequate treatment and rehabilitation for the wards.

² We denied Thomas's request to judicially notice these documents on April 16, 2004.

However, this evidence was not presented to the juvenile court for consideration at the dispositional hearing, and is not conclusive that CYA could not provide a benefit to Thomas, in any event.

In addition to the argument that CYA could not provide a benefit because of its abysmal conditions, Thomas also asserts the court abused its discretion by failing to fully consider Thomas's mental health issues. Specifically, Thomas asserts the probation officer's last report did not indicate whether Thomas was taking medication for his mental health conditions, and if he was taking medication, what they were and the frequency of their administration. Thomas asserts this is a "glaring omission," given the fact that from the time Thomas first became involved with juvenile probation, he was diagnosed with mental health conditions that required both antidepressants and psychotropic medication.

The lack of mention of medication at the disposition hearing by both the probation officer and the court does not indicate the court's failure to fully consider Thomas's mental health issues when committing him to CYA, and does not undermine the court's finding of probable benefit. Although, according to the progress report, Thomas was not taking medication at Trinity Anza, he was actively participating in psychiatric treatment sessions, and was described as a "model resident during the rating period." Moreover, the full probation report submitted to the court contained Thomas's entire mental health history, including the most recent information from Trinity Anza. The court considered all the information available at the time of the dispositional hearing.

Thomas further asserts the court abused its discretion by failing to consider evidence regarding the conditions at Trinity Anza. At the dispositional hearing, Thomas offered the testimony of Ed Anderson, a private investigator, to demonstrate that Trinity Anza was not an appropriate CYA alternative because it was overrun with gang members. Through Anderson's testimony, Thomas intended to show that his failure at Trinity Anza was due to the shortcomings of the facility, not his own actions. However,

the court determined the testimony was irrelevant, because Anderson investigated Trinity Anza four months prior to Thomas's arrival there, and could not testify to the conditions while Thomas was present. In addition, the reasons Thomas claims he left Trinity Anza were not those conditions Anderson would testify about. Therefore, the court did not err in refusing to consider the offered testimony.

Finally, Thomas asserts the court abused its discretion by committing him to CYA because of his history of running away from his placements, not because of his delinquency. In support of this argument, Thomas cites *In re Aline D.* (1975) 14 Cal.3d 557, noting the similarities of the facts with the present case. In *Aline D.*, the Supreme Court reversed a commitment to CYA on the grounds that the only basis upon which the commitment was made was that there was no other alternative placement for the minor. The court stated: "The record before us reflects that the referee ordered the CYA commitment *solely* because there appeared to be no other available placement facility." (*Id.* at p. 559, italics added.) In addition, all parties interested in the disposition of the minor determined that a CYA commitment was inappropriate in that case. (*Id.* at p. 561.) The court concluded that lack of an alternative placement cannot be the sole determining factor in a CYA commitment. Moreover, to base a CYA commitment on such, is a violation of section 734's provision that the court must be "fully satisfied" that the commitment will probably benefit the minor.

While it is true the juvenile court in the instant case committed Thomas to CYA in part because there was not an alternative placement from which he could not run, it did not commit minor to CYA *solely* for that reason. Indeed, the instant case is similar to *In re Gerardo B.*, *supra*, 207 Cal.App.3d 1252, in which the court concluded that an expression of concern at a dispositional hearing in which a minor is committed to CYA will not necessarily support a conclusion that the court was not "fully satisfied" with the commitment. The court in *Gerardo B.*, "considered the programs at [C]YA, and observed that although [the minor] could suffer detriment, it felt that he was bright

enough to choose the right option and benefit from the programs.” (*In re Gerardo B.*, *supra*, 207 Cal.App.3d at p. 1258.) In so doing, the juvenile court, while expressing concern over the commitment to CYA, considered other relevant factors and did not base the disposition *solely* on the lack of alternative placements.

Like the juvenile court in *Gerardo B.*, the juvenile court in the instant case considered additional factors when committing Thomas to CYA. For instance, the court expressed the potential benefits to the minor from a CYA commitment such as the fact that “[CYA] can provide services that will assist [Thomas] with respect to graduating from high school.” Additionally, the court noted, “[h]e will have the opportunity to take substance abuse courses, anger management, other types of programming to assist him in terms of reducing his impulsiveness” The court noted the additional need to commit Thomas to CYA because it is a locked facility and Thomas had a proven history of walking away from alternative, unlocked placements. The court stated: “the problem that is noted throughout the file is that he does not stay where he is placed.”

It is clear that, unlike the court in *Aline D.*, the court in the instant case did not commit Thomas to CYA *solely* because there were no alternative placements. The court was fully satisfied that Thomas would benefit by the treatment provided by CYA within the meaning of section 734, and did not abuse its discretion in committing minor to CYA.

DISPOSITION

The order of the juvenile court is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.